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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/739,227	10/27/2003	Andrew J. Dosmann	MSE #2673	7335
7590 Jerome L. Jeffers, Esq. Bayer Healthcare LLC P.O. Box 40 Elkhart, IN 46515-0040		04/03/2007	EXAMINER AKANBI, ISIAKA O	
			ART UNIT 2886	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	04/03/2007	PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/739,227	DOSMANN ET AL.
	Examiner Isiaka O. Akanbi	Art Unit 2886

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 26 December 2006.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-33 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 1-23 is/are allowed.  
 6) Claim(s) 24-27 is/are rejected.  
 7) Claim(s) 28-33 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 27 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Amendment***

The amendment filed 26 December 2006 has been entered into this application.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurandt (4,838,697).

Regarding claim 24, Kurandt discloses a readhead comprising of a first LED (6/7/8) having a first center-wavelength associated therewith and being adapted to emit a first path of light, a beam splitter (9/10) positioned in the first path of light, a second LED (6/7/8) positioned relative to the first LED and the beam splitter and having a second center-wavelength associated therewith and being adapted to emit a second path of light intersecting the beam splitter, wherein the first and second paths of light interact with the beam splitter (9/10) forming a beam of illumination comprising light from the first LED and the second LED (fig. 1) and the readhead further comprising a face defining an exit aperture (i.e. opening) through which the beam passes, wherein the sample aperture (i.e. opening) is spaced from the face and positioned to be illuminated by the beam such that when the sample is located on the sample aperture, the sample will reflect at least a portion of the beam (col. 3, line 1-15), a detector (3) comprising an active area and a detection aperture (i.e. opening) positioned to receive at least a portion of diffuse light resulting from the reflected beam (col. 2, line 53-63) and a light-scattering section (12) positioned upstream of the detector active area (fig. 1)(col. 3, line 1015).

Kurandt fails to specify that light-scattering section comprising a plurality of steps defining one or more angles greater than 90 degrees and the section is positioned such that the steps are angled to reduce stray internal light on the detector active area.

However, since he teaches that the light is scattered and is known in the art that scattering (i.e. to cause to go in different direction/angles) is a change of the spatial distribution of a beam of radiation when it interacts with a surface. It would have been obvious to one having ordinary skill in the art at the time of invention to design light-scattering section that comprising a plurality of steps that defining one or more angles greater than (i.e. 90 degrees) for the purpose providing sufficient illumination to create a sufficiently bright image with accuracy. Further it would have been obvious to one having ordinary skill in the art at the time of invention to design the section that is positioned such that the steps are angled to reduce stray internal light (unwanted beam) on the detector active area for the purpose of providing a more accurate measurement.

As to claim 25, Kurandt fails to specify that the one or more angles defined by the plurality of steps are approximately 100 degrees, however, since he teaches scattering (i.e. to cause to go in different direction/angles) which is known in the art as a change of the spatial distribution (i.e. 100 degrees) of a beam of radiation when it interacts with a surface. It would have been an obvious matter of design choice to one of ordinary skill in the art to design one or more angles defined by the plurality of steps that are approximately (i.e. 100 degrees) for the purpose providing sufficient illumination to create a sufficiently bright image with accuracy.

Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurandt (4,838,697) in view of Henderson et al. (3,910,701)

As to claim 26, Kurandt fails to specify that the second center-wavelength is greater than the first center-wavelength, however since he discloses first and second LED that are both associated with bandwidth and tolerance (6/7/8)(fig. 1)(col. 2, line 59-60) that fulfills this function can be used it would have been obvious to use variety of wavelengths (i.e. 100nm) and any selected narrow band (i.e. 25 nm)(col. 2, line 11-16)(col. 6, line 18-22) as described by Henderson, Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to provide the second center-wavelength that is greater than the first center-wavelength for the purpose of providing multiple measurement.

As to claim 27, Kurandt and Henderson discloses everything claimed, as applied to claim 26 above, in addition Kurandt discloses the beam splitter (9/10) comprising a bandpass filter having a filter center-wavelength and a filter tolerance associated therewith and the filter center-wavelength and filter tolerance are selected to separate wavelength associated with the first LED from wavelengths associated with second LED such that the light in the beam from the first LED does not have wavelengths equal to wavelengths of light in the beam from the second LED (fig. 1)(col. 2, line 64- col. 3, line 1-15).

### ***Response to Arguments***

Applicant's arguments/remarks, see pages 9-12, filed 26 December 2006, with respect to the rejection(s) of claim(s) 28 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, the rejection(s) of claim(s) 24-27 under 35 U.S.C. 103(a) has been fully considered but they are not persuasive. Applicant's arguments see pages 9-10, with respect to cited reference Kurandt as neither described/suggest or disclose an aperture, let alone three different apertures as required by claim 24, the examiner disagrees with the applicant arguments. The reference of Kurandt shows openings/areas (aperture) through which beam pass (figs. 1-3). Additionally, as to applicant arguments to claims 25 and 26, that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine would have been obvious to one having ordinary skill in the art at the time of invention to combine Kurandt and Henderson in order to provide multiple measurement. Further, It would have been an obvious matter of design choice to one of ordinary skill in the art to design one or more angles defined by the plurality of steps that are approximately (i.e. 100 degrees) for the purpose providing sufficient illumination to create a sufficiently bright image with accuracy.

***Allowable Subject Matter***

Claims 1-23 are allowed over the prior art of record.

As to claims 1-23, the examiner's statement of reasons for allowance is indicated in the previous Official Action dated September 25, 2006.

Claims 28-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As to claim 28, the prior art of record, taken alone or in combination, fails to disclose or render obvious the filter has associated therewith a filter bandpass being relatively narrow compared to the first bandwidth and the second bandwidth, in combination with the rest of the limitations of the claim. Claims 29-33 are allowable by virtue of their dependency.

***Additional Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed in the attached form PTO-892 teach of other prior art illumination source readhead that may anticipate or obviate the claims of the applicant's invention.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

#### **Fax/Telephone Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isiaka Akanbi whose telephone number is (571) 272-8658. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tarifur R. Chowdhury can be reached on (571) 272-2287. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Isiaka Akanbi

March 25, 2007



TARIFUR CHOWDHURY  
SUPERVISORY PATENT EXAMINER